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11 *Attorneys for plaintiff and counter-defendant*
12 *The Bank of New York Mellon f/k/a The*
13 *Bank of New York as Trustee for the*
14 *Certificateholders of CWABS, Inc., Asset*
Backed Certificates, Series 2004-AB1

15 UNITED STATES DISTRICT COURT
16 DISTRICT OF NEVADA

17 THE BANK OF NEW YORK MELLON FKA
18 THE BANK OF NEW YORK AS TRUSTEE
19 FOR THE CERTIFICATEHOLDERS OF
CWABS, INC., ASSET BACKED
CERTIFICATES, SERIES 2004-AB1,

20 Plaintiff,

21 vs.

22 TERRA BELLA OWNERS ASSOCIATION
23 INC.; MIDNIGHT RAMBLER TRUST;
24 SATICOY BAY LLC, SERIES 7524
MIDNIGHT RAMBLER TRUST; and
HAMPTON & HAMPTON COLLECTIONS,
25 LLC,

26 Defendants.

27 AND RELATED COUNTERCLAIMS
28

Case No.: 2:16-cv-00549-APG-NJK

**MOTION TO EXCUSE DARREN
BRENNER, ARIEL STERN, JAMIE
COMBS, LILITH XARA, AND NICHOLAS
BELAY FROM ATTENDING
SETTLEMENT CONFERENCE**

Pursuant to the court's order re: settlement conference, ECF No. 100, plaintiff and counter-defendant The Bank of New York Mellon f/k/a The Bank of New York as Trustee for the Certificateholders of CWABS, Inc., Asset-Backed Certificates, Series 2004-AB1 (**BoNYM**) respectfully requests the court excuse Darren Brenner, Ariel Stern, Jamie Combs, Lilith Xara, and Nicholas Belay from attending the settlement conference currently scheduled for August 20, 2020.¹

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Melanie Morgan (an Akerman partner) and Nicholas Belay (an Akerman associate) are actively handling this case for BoNYM. Ms. Morgan plans to attend the settlement conference and is prepared in good faith to attend and negotiate a settlement without further assistance. BoNYM respectfully requests that Mr. Brenner, Mr. Stern, Ms. Combs, Ms. Xara and Mr. Belay by from the personal attendance requirement set forth in this court's July 15, 2020 order. (ECF No. 95).

II. LEGAL STANDARD

The court's July 15, 2020 order requires "all counsel of record" to "appear for the duration of the settlement conference." (ECF No. 95 at 1.) It also states, "[r]equests for an exception must be supported by a compelling justification[.]" (*Id.* at 2.)

The court's August 14, 2020 order extends a one-time courtesy for counsel to seek to be excused: "[t]o the extent any attorney of record wishes to be excused, a proper request for that relief must be filed by noon on August 17, 2020." (ECF No. 100 at 2.)

III. ARGUMENT

The court should find a compelling justification exists to excuse Mr. Brenner, Mr. Stern, Ms. Combs, Ms. Xara, and Mr. Belay from attending the settlement conference.

Mr. Brenner: Mr. Brenner is no longer associated with Akerman. His contact information has been updated on the docket, and BoNYM has moved to remove him as its counsel of record on the electronic service list. (ECF No. 103.)

¹ Mr. Stern, Ms. Combs, Ms. Xara and Mr. Belay have all affixed their e-signatures to this motion. Mr. Brenner has not, but is longer associated with Akerman.

1 **Mr. Stern, Ms. Combs and Ms. Xara:** Mr. Stern, Ms. Combs and Ms. Xara are current
2 Akerman attorneys who were previously—but are not currently—internally assigned to this matter.
3 None have been actively involved in preparing for the upcoming settlement conference, and would
4 not meaningfully contribute to settlement negotiations as a result. Consistent with this
5 representation, BoNYM has moved to remove Mr. Stern, Ms. Combs and Ms. Xara as its counsel of
6 record on the electronic service list. (ECF No. 104.)

7 **Mr. Belay:** Mr. Belay is the Akerman associate currently internally assigned to this case.
8 He has been actively involved in all aspects of this matter since December 2019, but has recently
9 been working with Ms. Morgan, who is planning to attend the settlement conference. Mr. Belay will
10 be available via telephone or email to support Ms. Morgan, but requests to be excused from
11 personally attending so BoNYM need not incur duplicative attorneys' fees.² Ms. Morgan began
12 handling the matter following Mr. Brenner's departure from Akerman. Since 2013, Ms. Morgan has
13 represented BoNYM, among other financial institutions, in hundreds of NRS 116 quiet title actions.
14 Ms. Morgan is prepared to address the issues specific to this matter and is capable of handling the
15 settlement conference without further assistance.

16 Finally, the undersigned acknowledge their failure to note the personal attendance
17 requirement. Ms. Morgan, Mr. Belay, and several other Akerman attorneys reviewed the court's July
18 15, 2020 order, ECF No. 95, in an effort to ensure full compliance with the court's requirements, but
19 did not understand the order to mean every attorney of record must attend. In re-examining the
20 order, that is clearly what it says.

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28 ² In the event this request is denied, BoNYM requests leave to amend its settlement statement to note that both Ms. Morgan and Mr. Belay will attend the settlement conference on behalf of BoNYM.

IV. CONCLUSION

For the foregoing reasons, BoNYM respectfully requests the court excuse Mr. Brenner, Ms. Combs, Ms. Xara, Mr. Belay and Mr. Stern from attending the August 20, 2020 settlement conference.

DATED: August 17, 2020.

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/s/ Ariel E. Stern

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Attorneys for plaintiff and counter-defendant The Bank of New York Mellon f/k/a The Bank of New York as Trustee for the Certificateholders of CWABS, Inc., Asset Backed Certificates, Series 2004-AB1

IT IS SO ORDERED.

Dated: August 17, 2020


Nancy J. Koppe
United States Magistrate Judge